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No. 87-997

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

IN RE: C.H. BUTCHER, JR., - - - Debtor,

JAMES R. MARTIN, TRUSTEE, - - Petitioner,

versus

FIRST NATIONAL BANK OF LOUISVILLE, KENTUCKY, - - Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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EDITOR'S NOTE

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QUESTION PRESENTED

Whether the decision by the Sixth Circuit Court of Appeals that Bankruptcy Rule 9006(a) cannot be used to extend the two-year limitations period prescribed by 11 U.S.C. § 546(a) merits, under the criteria set forth in Supreme Court Rule 17, review by the United States Supreme Court.*

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*In compliance with Supreme Court Rule 28.1, respondent lists its parent companies, subsidiaries and affiliates as follows: First Kentucky National Corporation; First Kentucky Trust Company; First National Bank, Louisville; CommerceNational Bank, Lexington; The Third National Bank of Ashland; The American National Bank and Trust Company, Bowling Green; Central Bank and Trust Company, Owensboro; Mutual Trust Bank, New Albany, Indiana; First Kentucky Company; First Kentucky Investment Advisors, Inc.; Churchill Insurance Agency, Inc.; First National Properties, Inc.; First Kentucky National Trading Company; First Kentucky National Charitable Foundation, Inc.; National Processing Company, Inc.; First Premises Corporation; Second Premises Corporation; Churchill Leasing Corporation; First Louisville Leasing Corporation; First National Broadway Corp.; FNB Service Corporation; FKYN Brokerage, Inc.; and Longue Vue, Inc., Mississippi. There are no parties other than those stated in the caption.

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IN THE

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IN RE: C. H. BUTCHER, JR., - - - *Debtor,*

JAMES R. MARTIN, TRUSTEE, - - *Petitioner,*

v.

FIRST NATIONAL BANK OF LOUISVILLE, KENTUCKY, - - - - - *Respondent.*

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Respondent First National Bank of Louisville ("First National") responds as follows to the Petition for Writ of Certiorari filed by James R. Martin, Trustee in Bankruptcy for the Estate of C. H. Butcher, Jr., (the "Trustee"):

COUNTERSTATEMENT OF THE CASE

This case originated as an adversary proceeding filed against First National by the Trustee in the United States Bankruptcy Court for the Eastern District of Tennessee, Northern Division. Mr. James Martin had been appointed trustee of the Estate of

Mr. C. H. Butcher, Jr., on August 17, 1983. On August 19, 1985, the Trustee filed his complaint against First National under sections 548(a), 544(b), and 547(b) of the Bankruptcy Code (11 U.S.C.).

Section 546(a) of the Bankruptcy Code, 11 U.S.C. § 546(a), provides that "[a]n action or proceeding under section 544, 545, 547, 548, or 553 of this title may not be commenced after the earlier of (1) two years after the appointment of a trustee under section 702, 1104, 1163, or 1302 of this title; or (2) the time the case is closed or dismissed." When one includes August 17, 1983 in computing the two-year period, the last day on which the Trustee could have filed his complaint was Friday, August 16, 1985. Assuming that Bankruptcy Rule 9006(a) (reproduced in Petition at 4-5) extended his time for filing, the Trustee filed his complaint on the following Monday, three days late.

On September 20, 1985, First National filed a motion to dismiss the complaint as barred by the applicable statute of limitations contained in section 546(a). In support of its motion, First National relied primarily on *Rust* v. *Quality Car Corral, Inc.*, 614 F. 2d 1118 (6th Cir. 1980), in which the Sixth Circuit held that a rule of procedure cannot be applied to enlarge a federal statute of limitations. The bankruptcy court nevertheless denied First National's motion by a memorandum and order entered on December 30, 1985.

On March 4, 1986, the United States District Court for the Eastern District of Tennessee granted First National leave to appeal from the order of the bank-

ruptcy court pursuant to 28 U.S.C. § 1292(b). The district court heard oral argument on May 21, 1986 on the single question of whether the Trustee had complied with the applicable statute of limitations, 11 U.S.C. § 546(a) in filing his action. By an order and memorandum entered on July 21, 1986, the court concluded on the basis of *Rust* "that procedural rules such as Rule 6(a) and Bankruptcy Rule 9006(a) properly extend time periods prescribed by the rules or by any applicable statute once the action has commenced, but they cannot enlarge *ex post facto* the time for commencing the action itself." Memorandum opinion at 6-7 [Petition appendix ("Pet. app.") B at 69]. The district court ordered dismissal of the complaint, and an appeal to the Sixth Circuit followed.

The Sixth Circuit affirmed the dismissal of the Trustee's complaint, rejecting all of the arguments now set forth in the Trustee's petition. The court of appeals agreed with the district court that the Trustee's complaint had not been timely filed:

> Because Bankruptcy Rule 9006(a) does not extend or limit the jurisdiction of the bankruptcy courts, *see* 28 U.S.C. § 2075, it does not alter the conclusion that a complaint must be filed within two years from the date of the trustee's appointment. The two-year limitations period begins to run on the date of the trustee's appointment and expires twenty-four months later, irrespective of whether the last day falls on a Saturday, Sunday, or holiday. [footnote omitted] Like the Federal Rules of Civil Procedure, the Bankruptcy Rules

> govern procedural matters after a procedure has been timely commenced. Jurisdiction must arise from section 546(a) without reference to Bankruptcy Rule 9006(a).

829 F. 2d at 600-01; Pet. app. C at 92.

The Trustee now petitions this Court to review the decision below, suggesting that he has been a victim of a "trap for the unwary." Petition at 41.

Although the Trustee devotes almost the entirety of his statement of facts to insinuations that First National somehow obstructed discovery of the facts necessary to the commencement of his suit, the record below is devoid of any evidence or findings to support such a charge. The reason for this absence, as the court below confirmed (Pet. app. C at 94), is that the Trustee never raised this issue in the bankruptcy court or the district court. In fact, the Trustee did not even mention the issue in the pre-argument statement that his counsel mailed to the clerk of the court of appeals on August 12, 1986. Not until nearly two months later, when he served his supplemental pre-argument statement on October 8, 1986, did this new rationalization occur to the Trustee.

First National cooperated fully with the Trustee's investigation of the Butcher debacle, and nothing prevented the Trustee from filing his complaint on time except his misplaced reliance upon a procedural bankruptcy rule to extend a statute of limitations established by the Bankruptcy code. The Trustee's state-

facts is thus both inaccurate[1] and irrelevant. ... t has long followed the rule of not considering, even in a petition for writ of certiorari, matters not raised in the original proceedings below. *See, e.g., Ellis v. Dixon*, 349 U. S. 458, 460 (1955). The only issue presented to this Court is a legal one: whether the Sixth Circuit's refusal to extend the two-year limitations period prescribed by 11 U.S.C. 546(a) by means of a rule of bankruptcy procedure deserves the scrutiny of this nation's highest court.

REASONS FOR DENYING THE WRIT

Rule 17 of the Rules of the Supreme Court of the United States has codified the Court's earlier decisions establishing that "[a] review on writ of certiorari is not a matter of right, but of judicial discretion, and

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[1]For example, First National never advised the Trustee "that the Trustee had not been afforded access to all the documentation in the possession of First National." Petition at 13. First National merely refused to accede to the Trustee's demand for "written confirmation" that First National possessed no pertinent documents other than those already "inspected" by the Trustee's counsel. The reason for this refusal was hardly sinister: First National had produced numerous file drawers of documents at the Trustee's request and knew for a fact that the Trustee's attorneys had not yet inspected all of them. As for the deposition of Leonard Hardin on August 15, 1985 (Petition at 14-15), the record would show that this forty-two page deposition contributes nothing to what already was known or available to the Trustee from documents produced and prior depositions of Mr. Hardin. Apart from Mr. Hardin's having been available for a deposition at any time during the two years prior to August 15, 1985, except for brief periods of absence from the office, the Trustee certainly could have compelled his attendance at any time if additional testimony had been as critical as the Trustee now pretends.

will be granted only when there are special and important reasons therefor." The Trustee submits that the Sixth Circuit's decision in this case merits review under Rule 17 because it conflicts with decisions by other federal circuits on the same issue and even with two applicable decisions by this Court. Both contentions are wrong.

I. The Decision Below Does Not Conflict With Any Applicable Decisions of This Court

A. The Holdings In *Rust* and The Decision Below

Although a response to a petition for writ of certiorari is not the place to explore every subtlety of the merits of the underlying controversy, a glance at the merits is necessary here in order to show that neither the decision below nor, by implication, the Sixth Circuit's earlier *Rust* decision is at odds with any decision of this Court.

In *Rust,* the Sixth Circuit held that Rule 6(a) of the Federal Rules of Civil Procedure (reproduced in Petition at 5) cannot be used to extend the one-year statute of limitations of the Truth in Lending Act, 15 U.S.C. § 1640(e). Citing Rule 82,[2] the court reasoned that a complaint not filed within the time period prescribed by a federal statute leaves the court without jurisdiction to entertain it. "The Federal Rules of Civil Procedure do not alter this fundamental premise. . . . Their design is, rather, to govern procedural mat-

[2]Rule 82 provides in part that "[t]hese rules shall not be construed to extend or limit the jurisdiction of the United States District Courts or the venue of actions therein."

ters once an action is properly before the court." 614 F. 2d at 1119.

Despite its reference to jurisdiction, the holding in *Rust* specifically concerned "the relationship between a federal statute and Rule 6(a)," *id.*, not the relationship between a federal statute and the court's jurisdiction in every other context. The court made this clear in *Jones* v. *TransOhio Savings Ass'n*, 747 F. 2d 1037 (6th Cir. 1984), in which it determined that the Truth in Lending Act's statute of limitations is subject to equitable tolling. The court restricted its references to jurisdiction in *Rust* as "addressing only the jurisdiction to hear claims under the TILA in the absence of fraudulent concealment meriting application of equitable tolling." *Id.* at 1042.

The simple message of *Rust* and *Jones*, therefore, is that the Federal Rules of Civil Procedure, which commence operation at the time of filing of a complaint, do not in themselves authorize the extension of a congressionally-prescribed limitations period, although a showing of entitlement to equitable tolling may make timely an otherwise tardy complaint. The corollary message of the decision below is that Bankruptcy Rule 9006(a) cannot save an untimely complaint in an adversary proceeding in bankruptcy, at least where no claim to equitable tolling has been raised in the pleadings or the bankruptcy court.

B. The Decision Below Does Not Conflict with *Zipes* v. *Trans World Airlines*

The Trustee contends (Petition at 38-40) that the decision below affronts this Court's holding in *Zipes* v. *Trans World Airlines, Inc.*, 455 U. S. 385 (1982). The court there held that "filing a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling." *Id.* at 393. To put it another way, the court concluded that the limitations period established by 42 U.S.C. § 2000e-5(e) is not "jurisdictional." The Trustee thus tries to set up a conflict between this Court's reasoning in *Zipes* and the Sixth Circuit's references in *Rust* to the jurisdictional qualities of a statute of limitation. According to the Trustee's logic, such a conflict must surely taint both *Rust* and the adherence to it in the decision below.

As we have seen, however, the Sixth Circuit has never construed *Rust* as a metaphysical pronouncement on the mysteries of absolute jurisdiction. On the contrary, the Sixth Circuit cited *Zipes* in its *Jones* decision, 747 F. 2d at 1041, in deciding that the statute of limitations of the Truth In Lending Act, like that of Title VII, remains subject to the equitable doctrines of waiver, estoppel, and tolling. Since *Zipes* did not turn upon or even mention the relationship between Rule 6(a) and the statute, both *Rust* and the decision below are perfectly in accord with it.

C. The Decision Below Is Not In Conflict With This Court's Decision In *Union National Bank* v. *Lamb*

The Trustee places his greatest reliance upon a supposed discrepancy between the decision below and *Union National Bank* v. *Lamb,* 337 U. S. 38 (1949). *Lamb* involved the computation of time under 28 U.S.C. § 2101, which at that time established the ninety-day period for filing a petition for writ of certiorari with this Court. The petitioner in *Lamb* filed its petition on a Monday although the ninety-day period had expired on Sunday. Observing that Rule 6(a) provides the method for computation of time prescribed or allowed not only by the civil rules but by "any applicable statute," the court concluded "that the considerations of liberality and leniency which find expression in Rule 6(a)" were equally applicable to the statute governing the filing of a petition for writ of certiorari. 337 U. S. at 40-41.

In comparing the present case to *Lamb,* the Trustee seems to suggest that federal statutes of limitations like 11 U.S.C. § 546(a) similarly are "applicable statutes" governed by Rule 6(a) or its procedural models. The Trustee's argument, however, inserts into Rule 6(a) the word "every" for the word "applicable." The only plausible meaning of the phrase "any applicable statute" is discussed at length by Professor Moore in his treatise on federal practice:

> In determining what statutes are "applicable" and hence to be construed in the light of Rule 6(a), it is necessary to consider the scope of the rules

> themselves. Rule 1 provides that the "rules govern the *procedure* in the United States district courts." It follows, then, that Rule 6(a) does not provide a general rule of statutory construction which the courts are bound to apply to all time periods mentioned in any statute that may come before the courts, nor does the Rule apply to time periods mentioned in other documents, such as contracts. Rather, as the court stated in *Joint Council Dining Car Employees* v. *Delaware, L. & W. R. R.,* [157 F. 2d 417, 420 (2d Cir. 1946),] "Rule 6(a) is a rule of procedure relating to acts done or proceedings had after the commencement of action and to any statutes expressly applicable to such proceedings." The expression "applicable statute" will, therefore, certainly embrace the time provisions of any statute, state or federal, which is made applicable by the Federal Rules, since in that situation the period of time is in fact designated by the Federal Rules.

2 *Moore's Federal Practice* ¶ 6.06[1] at 6-70 (2d ed. 1987) (emphasis in original).

The statute construed in *Lamb,* therefore, was precisely the type of statute to which a rule of procedure should apply: a statute establishing a time for the taking of some action in a pending lawsuit that already has been timely filed. The certiorari statute contested in *Lamb* was both applicable to an action taken "after the commencement of action" and even analogous to a rule of procedure. In fact, the time period for filing a petition for certiorari is now established by Rule 20

of the Supreme Court Rules, while Rule 29 requires the method of computation performed in *Lamb*.

The statute that established the time period for filing a petition for writ of certiorari offers a good example[3] of an "applicable statute" both under *Lamb* and Professor Moore's analysis of the phrase: It regulated an act done or a proceeding had "after the commencement of action." Even in *Lamb,* however, this Court did not construe Rule 6(a) as *requiring* an extension of the statutory time period. It merely observed that the "considerations of liberality and leniency" finding expression in the rule were applicable. 337 U. S. at 41. Professor Moore thus cites *Lamb* in a footnote to his discussion of whether courts may elect to apply the policy of Rule 6(a) to an "inapplicable" statute:

> This does not mean that the *principles* of Rule 6(a) cannot be invoked by a court in construing a time period designated by a statute not expressly applicable to proceedings had after the commencement of the action. Courts may well decide, in the absence of a contrary and controlling rule of construction, that justice will be best

[3]Yet another example of an "applicable statute" is that governing the removal of an action from state to federal court, 28 U.S.C. § 1446. Several courts have concluded that the method of computation described by Rule 6(a) should be used in calculating the thirty-day period for removal prescribed by this statute. *See Boulet* v. *Millers Mutual Insurance Ass'n,* 36 F.R.D. 99 (D. Minn. 1964); *Meyers-Arnold* v. *Maryland Casualty Co.,* 248 F. Supp. 140, 143 n. 9 (D.S.C. 1965). Removal, of course, also occurs after the timely commencement of the action, thereby making the removal statute "applicable" under Rule 6(a).

> served by applying the principles of Rule 6(a) by analogy. [footnote omitted] It does mean, however, that the court is not *obliged* by the terms of the rule to apply it to such other statutes.

2 *Moore's Federal Practice, supra,* ¶ 6.06[1] at 6-71 (emphasis in original). In the very next section of his treatise, Professor Moore extends this reasoning to suggest that Rule 6(a) "could not be said to apply expressly to a statute of limitations, which is anterior to the time when the federal rules begin to apply." *Id.* ¶ 6.06[2] at 6-71. Nevertheless, Professor Moore again observes that courts may *choose* to apply the principles of Rule 6(a) by analogy.

Professor Moore's well-reasoned analysis of Rule 6(a) establishes not only an underlying accord between *Lamb, Rust,* and the decision below, but also the absence of any true conflict among the courts of appeals on this issue.

II. The Decision Below Does Not Conflict With the Decision of Another Federal Court of Appeals on the Same Matter

A. No Conflict Exists on the Applicability of Bankruptcy Rule 9006(a) to a Statute of Limitations Established By The Bankruptcy Code

The Trustee cites and discusses seven decisions[4] from other circuits in attempting to establish a conflict

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[4]Those decisions are *Kane* v. *Douglass, Elliman, Hollyday & Ives,* 635 F. 2d 141 (2d Cir. 1980) (Rule 6(a) used to compute ninety-day limitation period for filing employment discrimination

(Footnote Continued on Next Page)

between the decision below and a decision by another federal court of appeals. Interestingly, not one of these decisions involves the application of Bankruptcy Rule 9006(a) or even a bankruptcy statute generally. Narrowly construed, the issue presented to this court is the applicability of Bankruptcy Rule 9006(a) to the two-year limitations period prescribed by 11 U.S.C. § 546(a), not the universal applicability of Rule 6(a) to every other time period established by Congress. There is to date only *one* decision by a federal court of appeals on this issue: the decision below.

The distinction is hardly an idle one. First, the Trustee has constructed his argument in every court below on the premise that some inherent peculiarity of the bankruptcy statutes warranted the application of Rule 9006(a) despite the Sixth Circuit's construction of Rule 6(a) in *Rust*. This is, in fact, the argument that succeeded in the bankruptcy court. *See* Pet. app. A at 49-55. Holding the Trustee's feet to his own

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claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1)); *Frey* v. *Woodard*, 748 F. 2d 173 (3d Cir. 1984) (Rule 6(a) used to compute time period under Federal Tort Claims Act, 28 U.S.C. § 2401(b)); *Hart* v. *United States*, 817 F. 2d 78 (9th Cir. 1987) (Federal Tort Claims Act); *Milam* v. *United States Postal Service*, 674 F. 2d 860 (11th Cir. 1982) (Title VII of Civil Rights Act of 1964); *Banks* v. *Chesapeake & Potomac Telephone Co.*, 802 F. 2d 1416 (D.C. Cir. 1986) (Rule 6(a) used to compute District of Columbia's three-year statute of limitations for personal injury actions); *First State Bank of Miami* v. *Gotham Provision Co.*, 669 F. 2d 1000 (5th Cir. 1982), *cert. denied*, 459 U. S. 858 (1982) (Rule 6(a) used to compute thirty-day notice prescribed by Packers and Stockyards Act, 7 U.S.C. § 196).

forge, he should not now be heard to complain that his bankruptcy problem necessitates a sweeping review of Rule 6(a) as applied to every conceivable federal statute.

Second, a case involving the applicability of Bankruptcy Rule 9006(a) to section 546(a) of the Bankruptcy Code is a poor vehicle for examining the scope of Rule 6(a). As the Trustee's own citations illustrate, most of the district and circuit court decisions in this area have arisen in cases involving limitations periods prescribed in statutes designed to remedy violations of personal rights, such as Title VII of the Civil Rights Act of 1964,[5] the Federal Tort Claims Act,[6] or the Truth In Lending Act.[7] Considered individually, these statutes may occasionally warrant application of the principles of Rule 6(a), both because of their special remedial purposes and because the act triggering the running of the limitations period—discovery of a personal injury, consumer fraud, or violation of a civil right—may be difficult to locate in time. Additionally, compliance with the statute invariably will require timely action by a lay person, both in recognizing the injury and in seeking counsel. Compare this to the situation in bankruptcy proceedings, where the triggering act—appointment of the trustee—is easily identifiable and the trustee ordinarily will be represented from the beginning by a battery of lawyers. These

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[5] 42 U.S.C. § 2000e *et seq.*

[6] 28 U.S.C. § 2671 *et seq.* (limitations prescribed at 28 U.S.C. § 2401).

[7] 15 U.S.C. § 1601 *et seq.*

distinctions between bankruptcy and other forms of litigation perhaps explain the absence of any other decision by a federal court of appeals concerning a "Monday filing" in bankruptcy court and the paucity of bankruptcy opinions on this point generally.[8]

This case, therefore, provides a poor springboard for an analysis of the broader implications of Rule 6(a). If a true conflict were to exist under the Truth In Lending Act, for example, between *Rust* and *Lawson* v. *Conyers Chrysler, Plymouth & Dodge Trucks, Inc.*, 600 F. 2d 465 (5th Cir. 1979), resolution of that conflict would better await presentation of a case involving that statute and similar equitable considerations. Since Rule 6(a) itself does not expressly apply to statutes of limitations, however, no true conflict would exist even if the issue in this case were to be cast broadly on the basis of Rule 6(a) instead of narrowly on that of Bankruptcy Rule 9006(a).

B. No Conflict Exists Among the Circuits on the Applicability of Rule 6(a) to Statutes of Limitations Because Application of the Rule Is Elective Under the Circumstances

The decisions by federal courts of appeals applying Rule 6(a) to a statute of limitations have never explained forthrightly and by reasoned analysis whether or why they were employing the rule expressly or by analogy. Typical is *Kane* v. *Douglass, Elliman, Holly-*

[8]The Trustee cites only two other cases on this issue, *In re Oro Import Co.*, 69 Bankr. Rep. 6 (S.D. Fla. 1986), and *In re Kaelin Associates Electrical Construction, Inc.*, 70 Bankr. Rep. 412 (Bankr. E.D. Pa. 1987). Thus, the history of Rule 9006(a) has occasioned only three reported efforts at any level to employ the rule for the extension of a statute of limitations in bankruptcy.

day & Ives, supra note 3, cited by the Trustee (Petition at 32) as a decision in conflict with the opinion below. *Kane* involved a *pro se* plaintiff who filed a complaint for sex discrimination under Title VII one day beyond the ninety-day limit established by 42 U.S.C. § 2000(e)-5(f)(1), a situation certainly involving equitable considerations absent from this case. The court seems to have applied Rule 6(a) as a matter of right to salvage the complaint, although it relied upon another Title VII decision[9] from another circuit extending the period because "the spirit of Rule 6(a) governed. . . ." 635 F. 2d at 142.

To address but one other circuit decision advanced by the Trustee as a "conflict," the court in *First State Bank of Miami* v. *Gotham Provision Co., Inc., supra* note 3, explained more clearly its decision to apply Rule 6(a). Like the panel below, which deferred to the spirit of *Rust* while considering a different statutory context, the panel of the Fifth Circuit in *Gotham* deferred to the Fifth Circuit's earlier decision in *Lawson, supra,* which applied Rule 6(a) to an otherwise tardy complaint under the Truth In Lending Act. *See* 669 F. 2d at 1014. In announcing its holding, however, the court explained that it perceived "no reason why the *method* of Rule 6(a) should not be invoked for purposes of computing the thirty-day notice and filing period prescribed by § 206 of the Packers and Stockyards Act." *Id.* (Emphasis added). At least in this instance, therefore, the Fifth Circuit seems to have

[9] *Pearson* v. *Furnco Construction Co.*, 563 F. 2d 815 (7th Cir. 1977).

adopted Professor Moore's suggestion that the application of the principle of Rule 6(a) "by analogy" is an option available to a court construing a specific statute of limitations.

The importance of Professor Moore's analysis to this case and to the Trustee's petition is that it invests federal courts with a degree of discretion in applying the "method" of Rule 6(a) under various statutes and various factual situations. It eliminates the need for a pronouncement by this Court establishing any requirement for the application of procedural rules "by analogy" in every conceivable situation, regardless of the statute or the equities involved. It also perhaps explains in part why this Court declined an invitation to review this same question in *Gotham, supra,* (petition for certiorari denied at 459 U. S. 858 (1982)), even though that case squarely presented the applicability of Rule 6(a) and any "conflict" that exists now existed then.

The Sixth Circuit's election not to apply procedural rules to extend a statute of limitations both in *Rust* and in the decision below is no more in conflict with decisions by other circuits than are other local rules supplementing federal rules of civil or appellate procedure. The propriety of drawing an analogy to Rule 6(a) in evaluating the timeliness of a complaint can and should be evaluated case by case, statute by statute. Thus, even if the issue were presented as "the applicability of Rule 6(a) to all federal statutes of limitations" rather than as "the applicability of Bankruptcy Rule 9006(a) to section 546(a) of the Bankruptcy Code,"

there still would exist no true conflict meriting the attention of this Court.

III. CONCLUSION

The Trustee argues in closing (Petition at 40-41) that Bankruptcy Rule 9006(a) sets a "trap for the unwary" if held inapplicable to statutes of limitations under the Bankruptcy Code. If so, it is a snare into which few have stumbled. The decision below is the first by any federal court of appeals addressing the relationship between Rule 9006(a) and a statute of limitations, a fact which alone suggests that Rule 9006(a) has hardly mined the landscape for bankruptcy litigants.

Unable to establish any true conflict between the decision below and a decision by another circuit or by this Court, the Trustee necessarily petitions this Court to salvage his bankruptcy complaint by undertaking a comprehensive review of the relationship between Rule 6(a) and all other federal statutes of limitations. In effect, he asks the Court to apply Rule 6(a) "by analogy" to innumerable federal statutes not even involved in this case. There is no need or even justification for such a broadside application, at least within the context of this particular lawsuit. Surely this Court's consideration of the scope of Rule 6(a) should await the emergence of a case implicating not only Rule 6(a) itself but also one of those federal remedial statutes, such as Title VII or the Truth In Lending Act, that have generated most of the litigation in this area.

Respondent First National Bank of Louisville respectfully asks that the Trustee's Petition for Writ of Certiorari be denied.

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